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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,424	03/21/2001	John L. Blair	BLAIR 3-5-5-3	2399

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EXAMINER	
CRAVER, CHARLES R	
ART UNIT	**PAPER NUMBER**
2682	6

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/813,424	Applicant(s) BLAIR ET AL.	
	Examiner Charles R Craver	Art Unit 2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 March 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-6, 8-13 and 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Thomas et al, US Pat 6,141,546.

Claim 1: Thomas discloses a controlling means for a wireless system transceiver, comprising means for sensing a characteristic of at least two channels in a communication system, means to update a channel list associated with the channels based on the characteristic, and means to select one of the channels to communicate with (col 6 lines 4-43), which would inherently provide a channel with a better data rate if a higher-quality channel is the one chosen. **Claim 2:** Thomas discloses measuring signal quality. **Claim 3:** Thomas discloses a wireless local network. **Claims 4 and 5:** Thomas discloses updating the table, inherently periodically (col 6 lines 31-54). **Claim**

6: Thomas discloses an RF communications system, which would inherently use channels in a band.

Claims 8-13: claims 8-13 disclose the inherent method performed by the apparatus of claims 1-6, and as such are rejected for the same reasoning set forth above.

Claim 15: Thomas discloses a controlling means for a wireless system transceiver, comprising means for sensing a characteristic of at least two channels in a communication system, means to update a channel list associated with the channels based on the characteristic, and means to select one of the channels to communicate with (col 6 lines 4-43). Further, such is disclosed as a mobile cellular device, which inherently includes an antenna, filter and power source. **Claims 16-20:** please see the rejection of claims 2-6 above.

Claims 22-24, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al, US Pat 6,122,291.

Claims 22, 24 and 28: Robinson discloses a method for transmitting data across a wireless communications network having multiple channels, comprising

establishing a bandwidth for transmission, determining a modulation scheme and inherent symbol rate, and selecting at least one channel to transmit, and transmitting the data using the scheme and rate (col 2 lines 3-24, col 6 line 50-col 7 line 14, col 4 lines 10-16). Robinson discloses determining a priority status and using such to

determine bandwidth, and thus modulation/symbol rate (col 4 lines 24-56). **Claim 30:** Robinson discloses a wireless local network.

Claim Rejections - 35 USC ' 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Frodigh et al, US Pat 5,726,978.

Claim 25: Robinson discloses applicant's invention of claim 22, but fails to disclose comparing interference.

Frodigh discloses the utility of measuring open channel interference in a communications system in order to allocate a channel with a given bandwidth and modulation scheme (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that interference levels should be reduced in channel allocation (col 6 lines 33-44). **Claims 26 and 27:** Frodigh discloses removing channels that are below a threshold based on the channels, and thus inherently the bandwidth (col 10 lines 15-36, col 11 lines 54-67).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Felix et al, US Pat 5,946,356.

Robinson discloses applicant's invention of claim 22, but fails to disclose using two channels or more.

Felix discloses the utility in a bandwidth-on-demand communication system to provide more than one channel depending on the needed bandwidth (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that high bandwidth communications are necessary, and adding the feature of Felix would allow even more bandwidth usage than a standard channel of Robinson could provide.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 1 above, and further in view of Robinson.

While disclosing applicant's invention of claims 1 and 8 above, Thomas fails to disclose priority for deciding a channel. Robinson, however, discloses a similar system wherein a priority status may be used to determine a channel and bandwidth (col 4 lines 24-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Thomas as it would provide better service for more important uses such as emergency lines, as suggested by Robinson.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 8 above, and further in view of Robinson.

Please see the rejection of claim 31 above.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 1 above.

While disclosing applicant's invention of claim 1 above, Thomas fails to disclose DSSS. However, such was notoriously well-known at the time of the invention, as exemplified by standard CDMA systems in which a mobile makes neighbor list channel measurements for handover purposes. Therefore, it would have been an obvious modification to one of ordinary skill in the art at the time of the invention to use the invention of Thomas in a Direct Sequence SS system in order to provide quality channel allocation in a number of systems.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 8 above.

Please see the rejection of claim 7 above.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 15 above.

Please see the rejection of claim 7 above.

Response to Arguments

Applicant's arguments filed 5-27-04 have been fully considered but they are not persuasive.

Regarding Thomas, the examiner asserts that Thomas anticipates the instant invention of e.g. claim 1. First note that the amended limitation reciting modifying a transmission rate is read as intended use. Second, the invention of Thomas would inherently modify the rate in the case of a different channel being selected.

Regarding Robinson, the examiner points out col 4 lines 24-56 of Robinson where it is stated that allocation of bandwidth and channels may be performed based on priority of the user and the data (i.e. emergency calls). As such, the priority is taught by Robinson.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications intended for entry)

Or:

(703) 872-9314 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington VA, sixth floor (receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Craver whose telephone number is (703) 305-3965.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin, can be reached on (703) 308-6739.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

8/9/04
CHARLES CRAVER
PATENT EXAMINER

cc

C. Craver
August 9, 2004